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May 31, 2017

Via ECF
Hon. James Orenstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Courtroom: 11D South

Re: **Bank v. Pro Custom Solar LLC**
Docket No. 1:17-cv-00613
Our File No. 28369-1
Request for Stay of Discovery Pending Resolution of Pre-Motion Conference for Dismissal

Dear Judge Orenstein:

This firm represents defendant Pro Custom Solar LLC ("Defendant") with respect to the above-referenced matter. Kindly accept this correspondence as Defendant's request that all discovery be stayed until after the July 12, 2017 pre-motion conference, and for any motion practice that might follow.

BACKGROUND

Plaintiff Todd C. Bank ("Plaintiff") filed his initial complaint on February 2, 2017. Defendant timely filed a request for pre-motion conference, seeking to submit a dismissal application. This Court granted Defendant's request.

On April 25, 2017, all parties appeared in-person for the pre-motion conference. This Court found that Plaintiff's initial complaint was deficient, and granted Plaintiff leave to file an amended complaint by May 5, 2017.

Before filing his amended complaint, Plaintiff served Defendants with: 26 interrogatories (not including sub-parts); 58 documents requests; and 22 requests for admissions. When Defendant requested if Plaintiff would be amenable to discussing a modest extension of the discovery deadlines, Plaintiff replied with a one-word email: "No."

Plaintiff filed his amended complaint on May 5, 2017. It raises the same two causes of action as raised by his deficient initial complaint: (1) violation of the Telephone Consumer Protection Act ("TCPA"); and (2) violation of New York's enactment of a similar statute, N.Y. Gen. Bus. Law § 399-p.

On May 19, 2017, Defendant filed a request for pre-motion conference to seek dismissal of Plaintiff's amended complaint. Defendant also asked for discovery to be stayed pending the request's disposition and any motion practice that might follow.

On May 26, 2017, Judge Hall issued an order: (1) granting Defendant's request for a pre-motion conference and scheduling same for July 12, 2017; and (2) directing Defendant to transmit any discovery-related requests to Your Honor. This request here is the product of Judge Hall's instruction.

BASIS FOR DEFENDANT'S REQUEST

Judge Hall is conducting a pre-motion conference on July 12, 2017, to address whether Defendant may submit a dismissal application. Thus, there is the very real possibility that this litigation might end without the need for either side to engage in costly and time-consuming discovery.

The potential for discovery to be both costly and time-consuming is very real in this case. Plaintiff has served extensive, broad demands for all manner of documents seeking (apparently) complete records on every phone call made by Defendant—or at Defendant's direction—for the past several years.

These costs would not be limited to the parties, but would also draw upon this Court's limited resources through discovery-related motion practice. The unreasonable scope of Plaintiff's demands will likely require motions to resolve and limit, as Plaintiff has already demonstrated a penchant for litigiousness. See ECF 14 (Plaintiff's motion to compel Defendant to provide unnecessary information in its initial disclosures, which this Court promptly denied).

SUMMARY REQUIRED BY INDIVIDUAL PRACTICE RULES

The original deadline for Defendant's responses to Interrogatories and Requests for Production was May 30, 2017. Defendant did serve responses to Plaintiff's Requests for Admission, and they are not the subject of this current request.

Defendant has made no previous requests for adjournment or extension of any kind. This request here is the same initial request made to Judge Hall, which she ordered to be forwarded to Your Honor.

Plaintiff has not consented to this request. Plaintiff has not provided any reason for his refusal.

This request does not affect any other proposed deadline. Indeed, it accommodates Judge Hall's order scheduling a July 12, 2017 pre-motion conference.

CONCLUSION

For the reasons set forth herein, Defendant respectfully requests that all discovery be stayed until after the July 12, 2017 pre-motion conference, and for any motion practice that might follow. Should Judge Hall deny Defendant's request to file a dismissal motion, Defendant respectfully requests that all discovery responses be due two weeks from the time of that denial.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP

/s Thomas J. Cotton, Esq.
Thomas J. Cotton, Esq.

TJC/s
cc (via ECF):
Plaintiff